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MAILED

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OFFICE OF PETITIONS

In re Application of	:	
Hagstom, et al.	:	
Application No. 10/733,706	:	DECISION
Filed: 11 December, 2003	:	ON PETITION
Attorney Docket No.: Mirus.048.01	:	

This is a decision on the petition under 37 C.F.R. §1.78(a)(3), filed 18 April, 2008, to accept an unintentionally delayed claim under 35 U.S.C. §120 and §119(e) for the benefit of priority to prior-filed applications.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 C.F.R. §1.78(a)(3) and §1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 C.F.R. §1.78(a)(2)(ii) and §1.78(a)(5)(ii). In addition, the petition under 37 C.F.R. §1.78(a)(3) and §1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §120 and §119(e) and 37 C.F.R. §1.78(a)(2)(i) and §1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in 37 C.F.R. §1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 C.F.R. §1.78(a)(2)(ii) and §1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition fails to comply with item (1) above.

It appears that Petitioner has not demonstrated and/or otherwise properly stated pendency over the course of applications to which he refers in the amendment filed with the petition, to wit: the instant Application No. 10/733,706 (the '706 application) to:

Application No. 10/733,706


- Application No. 10/628,734 (the '734 Application) to Application No. 09/447,966 (the '966 application)—furthermore, benefit has not been claimed to provisional Application No. 60/121,730 and 60/146,564 by the '966 application or by some other intervening application. (See: Manual of Patent examining Procedure (MPEP) §201.11(III)(c).); and
- Application No. 09/391,260 (the '260 application), to Application No. 08/975,573 (the '573 application), to Application No. 08/571,536 (the '536 application).

The amendment as drafted is unacceptable and, therefore, is not considered a proper reference under 37 C.F.R. §1.78(a)(2)(i) and under 37 C.F.R. §1.78(a)(5)(i).

Accordingly, the petition under 37 CFR 1.78(a)(3) is **dismissed**.

This matter is being referred to Technology Center AU 1633 for further processing in due course.

Any inquiries concerning this decision may be directed to John Gillon at (571) 272-3214. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.


Anthony Knight
Supervisor
Office of Petitions